

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,)
4)
5 Plaintiff,)
6 vs.) NO: 14-CV-1025 RB-SMV
7)
8 THE CITY OF ALBUQUERQUE,)
9)
Defendant.)

10 TRANSCRIPT OF PROCEEDINGS
11 TELEPHONIC STATUS CONFERENCE
12 BEFORE THE HONORABLE ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE
MONDAY, SEPTEMBER 10, 2018
10:00 A.M.
13 LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO

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21 (Proceedings recorded by machine shorthand and
transcript produced by Computer-Aided Transcription.)

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25

1 TELEPHONIC APPEARANCES continued **:

2 Also Present:

3 DR. JAMES D. GINGER
4 Court-appointed Independent Monitor

5 CHIEF MICHAEL GEIER
6 DEPUTY CHIEF ROGELIO BAÑEZ
7 DEPUTY CHIEF ERIC GARCIA
8 DEPUTY CHIEF ARTURO GONZALEZ
9 DEPUTY CHIEF HAROLD MEDINA
10 COMMANDER MICHELLE CAMPBELL
11 COMMANDER ANGELA BYRD
12 COMMANDER ROBERT MIDDLETON
13 LIEUTENANT JENNIFER PEREZ
14 SHANIA GALLEGOS
15 Albuquerque Police Department

16 HONORABLE LORENZO F. GARCIA, RET.
17 Non-legal Representative for City Council

18 DR. PETER WINOGRAD, Consultant

19 JAMES B. LEWIS
20 Senior Advisor to Mayor Keller

21 EDWARD HARNESS, Executive Director CPOA

22 JUSTIN MONTGOMERY, Vice President APOA

23 ALYSSA FERDA, USAO Outreach Coordinator

24 DIONNA K. FORD, Law clerk

25 (** Reporter's Note: The above appearance list is based on
the written list of attendees submitted to the Court after
the hearing.)

1 (On the record at 10:00 A.M.)

2 THE COURT: Good morning, everyone. This is
3 *United States of America versus City of Albuquerque*, our
4 September 2018 status conference. Would you-all state your
5 appearances for the record, please.

6 MR. AGUILAR: Esteban Aguilar, Jr., on behalf of
7 the City of Albuquerque.

8 MS. MARTINEZ: Elizabeth Martinez, U.S.
9 Attorney's Office, for the United States.

10 MR. MOWRER: Fred Mowrer on behalf of the
11 Albuquerque Police Officers Association.

12 DR. GINGER: Jim Ginger with the monitoring team.

13 CDR. BYRD: Commander Byrd, APD Training.

14 CHIEF GEIER: Mike Geier, APD.

15 MR. SCHMEHL: Jeramy Schmehl, Assistant City
16 Attorney on behalf of the City of Albuquerque.

17 FEMALE SPEAKER: (Inaudible.)

18 THE COURT: I didn't hear that last name.

19 MR. AGUILAR: That was Lindsey Van Meter, City of
20 Albuquerque.

21 CDR. MIDDLETON: And Rob Middleton, APD.

22 THE COURT: I'm sorry. I didn't hear that name,
23 either.

24 CDR. MIDDLETON: Rob Middleton, APD.

25 THE COURT: Yes, sir. Thank you.

1 FEMALE SPEAKER: Michelle (inaudible).

2 THE COURT: Sorry. I'm not able to hear that.

3 MR. AGUILAR: Commander Campbell, APD. Deputy
4 Chief Garcia, APD, is here as well. Lt. Perez is here, APD.

5 Dr. Winograd, APD. James Lewis. Deputy Chief Garcia --

6 MS. GALLEGOS: Shania Gallegos, APD.

7 JUDGE GARCIA: Lorenzo Garcia on behalf of the
8 City of Albuquerque City Council, but not as counsel of
9 record or legal counsel (inaudible) --

10 MR. AGUILAR: And Samantha Hults, City of
11 Albuquerque.

12 MR. HARNESS: Edward Harness, Civilian Police
13 Oversight Agency.

14 MR. KILLEBREW: Your Honor, this is Paul
15 Killebrew, Corey Sanders, and Stephen Ryals on behalf of the
16 Department of Justice.

17 MS. MARTINEZ: Your Honor, this is Elizabeth
18 Martinez. As we did the last time, at the conclusion of the
19 status conference, we will submit to the Court's clerk a
20 complete list of everyone who is here today so that we have
21 a comprehensive list for the court reporter.

22 THE COURT: That would be very helpful. And were
23 there any other -- any other folks appearing this morning
24 that we haven't heard from yet?

25 LAW CLERK: Good morning, Judge. This is Dionna.

1 THE COURT: Good morning, Dionna. Thanks for
2 being here.

3 MR. MONTGOMERY: I'm sorry. Justin Montgomery
4 with the Albuquerque Police Officers Association, as well.

5 THE COURT: Thank you.

6 Anyone else?

7 Great. Let's -- the parties have submitted, in
8 keeping with prior practice, a proposed agenda. And we're
9 going to begin this morning with Chief Geier. You have an
10 introduction to make, Chief?

11 CHIEF GEIER: Yes, I do, Your Honor. If you
12 remember, back in April, Deputy Chief Garcia and I went to
13 the Epoch training in New Orleans. And one of the takeaways
14 we got was, in their academy, they have both a sworn
15 commander and a civilian former dean of a university out
16 there. And it seems to be that it helps with the -- from
17 the academic standpoint to have that kind of approach. He
18 had some difficulty with law enforcement commanders at the
19 academy because they really aren't -- they're trained in law
20 enforcement subject matter as experts in that regard, but
21 not in the realm of some of the deficiencies that were being
22 pointed out to us with lesson plans and training protocols.

23 So we went on a search and we were really
24 fortunate that we found somebody local. Angela Byrd was
25 appointed commander in July of this year with APD. Her

1 previous experience includes law enforcement certification
2 and command with both the State of Kansas and New Mexico.
3 She was a deputy sheriff in Wichita, Kansas, for six years
4 and was Chief of Police for the Bosque Farms, New Mexico,
5 Police Department. She was appointed the director of the
6 Southeastern New Mexico Law Enforcement Training Academy in
7 2008, and where she held that position for eight years.
8 During that tenure, she was initially responsible for the
9 basic law enforcement academy and subsequently also
10 implemented programs that included advanced law enforcement
11 training, public safety telecommunications academy, and
12 certification by waiver academy. She also recognized the
13 need for police relations and implemented community-service
14 protocols for the basic academy.

15 Cdr. Byrd has earned her New Mexico Advanced
16 Certification in Leadership to include First Line
17 Supervisor, Intermediate, Advanced, Command, and Executive
18 Levels. She's a Master Instructor in Use-of-force Response
19 to Resistance, Defensive Tactics, and Instructor
20 Development. She is also instructor certified in law
21 enforcement disciplines including Reality-Based Training,
22 Firearms Training Systems, and General Police Instruction.

23 Cdr. Byrd holds a bachelor's degree in sociology
24 from Newman University in Wichita, Kansas. She also earned
25 a master's degree in criminal justice from Wichita State

1 University and has begun her doctoral studies.

2 She has taught criminal justice classes at the
3 university level, and has coached women's soccer for the
4 University of the Southwest in Hobbs, New Mexico.

5 So I'd like to introduce Cdr. Byrd. I believe
6 she's on line and may have a few opening statements just
7 regarding her philosophy.

8 Cdr. Byrd?

9 CDR. BYRD: Thank you, Chief.

10 Good morning, Judge. How are you this morning?

11 THE COURT: I'm very well. Thank you. And
12 that's a pretty impressive resumé you bring to the Academy.
13 I'd love to hear anything you might have to say.

14 CDR. BYRD: Well, as you well know, training is
15 where it all starts. And the mindset of the community
16 service begins at the cadet, at the basic level. The
17 Academy, which includes many facets of training, has made
18 significant strides just in the short time I've been here
19 with APD. And we have really tried to move forward in a
20 service-oriented direction. We have included many
21 community-based projects within the basic Academy now. And
22 trying to foster a foundation which will, hopefully,
23 progress through the career, through the officers' career at
24 APD.

25 We currently have about 29 laterals, which the

1 APD Academy staff is emphasizing the importance of community
2 involvement in that Academy, as well. All the staff at the
3 Academy want APD to succeed in this endeavor and will remain
4 steadfast, as we meet all the objectives and goals of the
5 CASA reform. As we make this transition, with the
6 seven-step process that I've found that is -- also with
7 Dr. Ginger -- how important it is to have that seven-step
8 process in place, I'm trying to lead from the front. And
9 the expectations of my staff will remain unwavering. After
10 meeting all the best practices and standards of training, we
11 are committed to maintaining the highest level of
12 professionalism, as APD moves forward.

13 It's a pleasure for me to be a part of this
14 transformation. I really appreciate the opportunity and
15 hope that I can bring as much as I can to the table to help
16 us get through all this.

17 Thank you.

18 THE COURT: Thank you, Commander. Welcome. And
19 God speed. I wish you well at the Academy and look forward
20 to hearing good reports from the Academy going forward.

21 CDR. BYRD: Thank you, Judge.

22 THE COURT: Let's see, Deputy Chief Garcia, are
23 you there?

24 MALE SPEAKER: He's stepping up to the
25 microphone, Your Honor.

1 THE COURT: Who's got this second item? I
2 couldn't tell whether it was Dr. Ginger or Deputy Chief.

3 DR. GINGER: Your Honor, this is Jim Ginger. I
4 think I have the first section of Item Number 2, and I think
5 then the chief will cover the second section.

6 THE COURT: That would be great. I'll hear you.

7 DR. GINGER: Just a very quick recap because I
8 know the Court has gotten the reports on this, but just to
9 sort of refocus us and review what we've provided to APD in
10 terms of technical assistance during the second half of the
11 last monitoring period: We worked very closely with APD on
12 13 separate and distinct areas during the second half of the
13 seventh reporting period. And I'll go through those very
14 briefly, with one exception. There's one issue we have that
15 has the monitoring team, as a whole, concerned. And we
16 mentioned it in the technical assistance report and we
17 mentioned it in-depth to APD when we were on site. And that
18 is what I have come to call the "counter-CASA effect" within
19 APD. It's a small group, but it's a widespread collection
20 of sworn personnel at sergeant's and lieutenant's levels
21 with civil service protection that appear to be, based on my
22 knowledge and experience, not completely committed to this
23 process.

24 I had a conversation with the Chief in depth
25 about that issue. He's cognizant of it. And I know he's

1 trying, as best he can, to work through it. But it's
2 difficult because those folks are in ranks and positions
3 that are protected by civil service, and the bid through the
4 Union contract tends to keep them there. So it's something
5 we're all aware of and we will be working through.

6 We provided 12 other pieces of technical
7 assistance during that period mostly related to internal
8 problem-solving processes, for example, policy development,
9 you know, how to work through the policy development
10 process; a training program for the Force Review Board,
11 which is a major sticking point on compliance at this point,
12 or has been at least, and designing new programs, new
13 training programs, for supervisors regarding the new
14 three-level force classification system.

15 We provided what I would call a mini seminar for
16 APD senior command staff on a strategic planning method that
17 should be beneficial to them as they're trying to move
18 forward. We worked with APD on designing a new training
19 program on use of force -- on the newly revised Use-of-Force
20 Policy. We provided some discussion and technical
21 assistance on strengthening the administration of APD
22 Training Academy.

23 Just parenthetically, I welcome Cdr. Byrd as
24 well. I just reviewed her first work product and it was --
25 it truly was the first training design piece that I've

1 reviewed from APD that complies to professional standards
2 and professional process. And kudos to her and her people
3 for pulling that together. It was really quite well done.
4 So I think that's going to make a major difference in terms
5 of where we move, moving forward.

6 We provided quite a bit of discussion and
7 consultation on addressing the use-of-force backlog. That
8 is still an ongoing process. We provided some -- the same
9 sort of conversation and structuring on the Force Review
10 Board and training processes. We also provided to the
11 Special Operations Division some fairly intensive and
12 wide-reaching consultation on less-than-legal-force options;
13 how those are defined and how they're trained and, actually,
14 even how they're delivered. And then we spent quite a bit
15 of time during that last part of the last reporting period
16 working with APD on global issue identification -- you know,
17 what are the burning issues, we basically walked through
18 those 12 already -- and then our recommendations for how
19 they might move forward.

20 So it was a pretty intensive and extensive
21 process. We received good receptions on virtually all of
22 the discussions that we had. APD continues to be in the
23 harness and pulling hard to move forward.

24 THE COURT: Dr. Ginger, you indicated one item of
25 concern, what you've described as the "counter-CASA effect."

1 And you said that this particular group you've identified
2 are not committed to the process. I think that was what you
3 said just a moment ago, but I'm concerned that -- is it
4 they're just ambivalent to the process or are they
5 undermining the process?

6 DR. GINGER: Well, they are certainly ambivalent.
7 Based on my experience in these projects, that ambivalence,
8 alone, because they're -- the ones I'm speaking of are in
9 critical areas, and that ambivalence, alone, will give rise
10 to exactly the sort of issues that we've seen in the past at
11 the training Academy. So while it's not overt, you know,
12 there's nobody sabotaging computer files or that sort of
13 thing, it's a sort of a low-level processing, but
14 nonetheless, it has an effect. It has, I think, a direct
15 and substantive effect. It's the critical issue I see with
16 APD at this point.

17 THE COURT: And you've talked with command staff
18 about this. I think if this came up at the prior status
19 conference, I wasn't here, as you recall, but I'm just
20 curious to know how this comes to your attention and what
21 sort of reaction you get when you have brought it to the
22 attention of command staff.

23 DR. GINGER: It came to my attention through
24 protracted issues over the past year, I guess, maybe a
25 little bit less than a year. You know, the same sort of

1 issues we had before Chief Geier and his crew came in, we
2 found again after Chief Geier and his crew came in. And it
3 was directly -- those issues were directly associated with
4 the same people that we had had problems with before. I had
5 a conversation with the Chief. I don't think that was any
6 news to him, but you know, given the fact that these folks
7 have civil service protection, his choices are limited at
8 this point.

9 THE COURT: Well, that's got me scratching my
10 chin. We've got a group you've identified as people that
11 are at least ambivalent and obviously not a positive part of
12 moving the process forward, even if they aren't actively
13 undermining it, but there isn't anything to be done about
14 that ambivalence. There isn't anything -- because of their
15 protection, we're just left to -- how do you deal with that
16 in systemic reform? You've bound to have run into something
17 like this before.

18 DR. GINGER: Sure.

19 MR. MOWRER: Your Honor, I hate to interrupt.
20 Just very briefly, this is Fred Mowrer, APOA. This the
21 first I'm hearing of this issue concerning what has been
22 listed as a critical issue -- "counter-CASA group"? --
23 obviously involving employees of the Department. And I'm a
24 little troubled that this is the first I'm hearing about
25 this. And would like to be part of some conversation as;

1 soon as possible, I guess, with the City, Dr. Ginger, City
2 Attorney, the Chief with regard to what this is all about,
3 this group and what is being done to address this.

4 THE COURT: And I think that's fair comment,
5 Mr. Mowrer. And I expect that you and the Chief and
6 Dr. Ginger and anyone else necessary to the conversation
7 will have that conversation when we're through here this
8 morning. It's the first I've heard of it. And if it's the
9 first you've heard of it, that's even more concerning.

10 So Dr. Ginger, with that directive, I'll ask that
11 you-all meet immediately afterward and discuss this, but
12 just in more general sense, how do you deal with
13 recalcitrance in the ranks when you've got civil service
14 protection?

15 DR. GINGER: It's fairly straightforward, Your
16 Honor. Just to correct the record, we did mention this in
17 our second mini report that went out to the parties. It was
18 included in there as one of the major issues that we saw APD
19 confronting, so it should -- it should be -- it should be a
20 term that is familiar with folks.

21 The process of addressing that is the old tried
22 and true method of oversight and supervision. And we have
23 two or three people who, while they may not be directly
24 disobeying orders, are somewhat slow to move along, and
25 that's just a matter of supervision, consultation,

1 notification, continued review of their work product. And
2 then, if it continues to not meet standards, then something
3 needs to be done through a disciplinary process.

4 So it is addressable. They addressed it at New
5 Jersey State Police. They addressed it at Pittsburgh.
6 Eventually, they addressed it at Los Angeles. This is not
7 an irreconcilable issue, but it is an important issue. But
8 it was in our second mini report that we produced to the
9 Court. It received specific notations in that report. I've
10 had conversations with the Chief about it prior -- prior to
11 this. And I think he's familiar with what we're talking
12 about. So I've been working with PD on this for quite some
13 time and it's been reported.

14 THE COURT: And is APOA and Mr. Mowrer, are they
15 on the circulation list for that -- the mini report?

16 DR. GINGER: Yes, sir.

17 THE COURT: All right. I'm still going to ask
18 that you-all meet and talk about this just so that everybody
19 is up to speed when we conclude here.

20 DR. GINGER: Yes, sir.

21 THE COURT: Thank you.

22 MALE SPEAKER: Your Honor, Chief Geier has a
23 brief comment, as well.

24 CHIEF GEIER: Your Honor, again, after
25 discussions with Dr. Ginger, even before that, we noticed

1 some of that -- again, some of those problems that were
2 being identified basically were at the higher level. And
3 they weren't just in the membership of the APOA, but some of
4 the unprotected positions at commander and whatnot that we
5 identified problems and, again, some of that resistance that
6 carried over from a previous administration, I believe.

7 We have made changes. Some of those people have
8 been removed from those positions, as well as being replaced
9 by other people who have picked up the slack. Because I
10 think the word got down to the lower levels, the sergeants
11 and lieutenants, it was a matter of loyalties to previous
12 commanders or a matter of miscommunication in terms of the
13 where the direction the Department was going, trying to go
14 forward with the CASA, and there was still some old-school
15 resistance. So we are on top of it at the higher levels. I
16 think we've made some significant changes, Cdr. Byrd being
17 one of those people that stepped up and addressed some of
18 deficiencies, even with her own people that had
19 miscommunications from previous command staff. So it isn't
20 something we're not aware of, as you have implied, yourself.
21 It is something that is deep-seated and is a little harder
22 to find a quick fix or solution to it, but I think, in the
23 long term, by having this foundation with new leadership and
24 a new direction from the top down, we should be able to get
25 through this and survive it.

1 Thank you.

2 MS. MARTINEZ: Your Honor, Elizabeth Martinez.

3 DOJ would like to participate in this dialogue. Thank you.

4 MR. KILLEBREW: Yes, Your Honor. This is Paul
5 Killebrew, just very briefly, for purposes of the record,
6 this thing that Dr. Ginger has been speaking of, he
7 discusses it in Document 398 on the court's docket at
8 page 10. And a draft of this document, which is
9 Dr. Ginger's mini report, was provided to the comments --
10 provided to the parties, in advance of being filed, for
11 review and comments. And we all had an opportunity to read
12 it and comment on it prior to it being filed.

13 Thank you, Your Honor.

14 THE COURT: Yes, sir. Thank you.

15 And Chief, I appreciate the positive comment.

16 I -- and I guess this is not anything that should surprise
17 us or take us -- catch us off guard, but it's...it's on
18 everyone's radar now, and I'll expect to hear an update in
19 subsequent status conferences.

20 Chief Garcia, Lt. Lowe? How about we hear about
21 the Compliance Plan?

22 D.C. GARCIA: Good morning Your, Honor. This is
23 Deputy Chief Garcia. The Compliance Plan, as you know, ran
24 from February 1st through July 31st of this year. Of
25 the 91 tasks that we had on our Compliance Plan, 88 of them

1 were completed. Three weren't completed and they will be
2 carried over to our next Compliance Plan that we are
3 composing currently. The three areas that we need to carry
4 over, two of them are related to the Video Review Unit and
5 it's basically hiring and training that personnel. And the
6 third one is from the Force Review Unit. We have
7 Lt. Jennifer Perez currently working on the Force Review
8 Board process. And we're needing to revamp that, thanks to
9 a lot of comments and -- from Dr. Ginger and his team --
10 it's helping us to revamp that process completely, so we can
11 make it more productive, Your Honor.

12 THE COURT: Thank you.

13 And anything from Lt. Lowe?

14 D.C. GARCIA: No, Your Honor. She is currently
15 on vacation.

16 MALE SPEAKER: Oh, man.

17 THE COURT: Well, good for her.

18 D.C. GARCIA: Well-deserved vacation.

19 THE COURT: All right. Anything else on this
20 Item 2?

21 I obviously read the numbers. 88 of 91, that's a
22 great percentage completion rate. I understand the comment
23 about the three uncompleted tasks rolling over, so I see
24 that as significant progress and appreciate it. I think the
25 Compliance Bureau is going to be one of the real positive

1 upgrades to our system that's going to serve us well going
2 forward.

3 Number 3, Cdr. Campbell, you're going to give us
4 a report on the -- well, Item 3?

5 CDR. CAMPBELL: Good morning, Your Honor.

6 Michelle Campbell, and I wanted to update you on our eighth
7 progress report that was filed through the courts on
8 September 1st; one of which I wanted to just make sure the
9 Court was aware that we did change up the way we did the
10 progress report just a little bit. At the beginning, we
11 make sure to let the reader know that we took -- that APD
12 and our new administration took key steps to strengthen APD
13 reform efforts; one of those being actually starting the
14 Compliance Bureau and bringing in the resources needed in
15 order to reach all the demands of the CASA recommendations
16 from the IMRs and everything else that goes along with
17 making sure that we're doing a very good job.

18 The report was also organized in ten sections as
19 formatted with the CASA because we wanted to make sure the
20 reader could follow exactly what we were doing when we were
21 laying out the progress report.

22 The other thing that we did with this progress
23 report is we added multiple links for the documentation.
24 That way, our readers could be more aware of the links that
25 APD has where all our information is stored. And we do our

1 best to make sure that everything is updated and is current
2 on those links. Also to kind of save the Court from having
3 a whole bunch of different reports added to the progress
4 report.

5 The Compliance Division also -- oh, we also
6 included five appendices to the report, which you'll find at
7 the end, which is the Compliance Division Work Chart. And
8 D.C. Garcia also just gave you an update of where we were
9 with the Compliance Plan.

10 The APD audit schedule -- and as you'll see, it
11 is subject to change. If APD sees a bigger concern, we'll
12 go ahead and change the audit schedule to reflect that.
13 That was one of the major things that APD did bring during
14 this progress time period is we started the Performance
15 Matrix Unit, which is doing the audits of the CASA-related
16 paragraphs to see where we are -- see where we're at and to
17 keep us going in the right direction.

18 The other thing that you will see, Your Honor, is
19 that reference to the IRS systems. APD was able to put a
20 lieutenant in charge of revamping that section and really
21 taking care of the paragraphs and all of the recommendations
22 with the IMRs. And they have changed the name to "Personal
23 [sic] Management Education and Development System." And
24 there's a draft in there for you to see. Again, it's going
25 through all of the approval processes. And they are

1 updating the policy and having that go through the 3-52
2 pros- -- progress, as well -- process, as well.

3 Do you have any questions or was there anything
4 that you saw in the progress report that you'd like me to
5 answer, sir?

6 THE COURT: No, thank you, Commander.

7 Dr. Ginger, you've looked at the status report
8 from the City. Any comment?

9 DR. GINGER: I think it shows steady progress,
10 Your Honor. And I would much rather that steady progress
11 than, you know, stellar progress here, stellar progress
12 there, and then other areas leaving a lot to be desired. So
13 I concur with your opinion that the Compliance Bureau is
14 going to be a major piece of this project moving forward.
15 The quality of their work has been absolutely spectacular
16 over the last six months. Everything we get from them
17 survives both assessments of both internal and external
18 validity. It's easy to read. There are no hidden -- hidden
19 corners that you have to seek out. It's a very well run and
20 integral part of this compliance process.

21 THE COURT: Well, Dr. Ginger, I think that may be
22 a new high in terms of praise. I don't think "absolutely
23 spectacular" has been -- that particular phrase has been
24 used before. So congratulations to the City and those
25 involved at the Compliance Bureau, particularly Chief

1 Garcia.

2 Anyone else on the City's progress report?

3 CDR. CAMPBELL: Thank you, sir.

4 THE COURT: Yes, ma'am. Thank you.

5 Number 4 is an update on the Use-of-Force
6 investigation backlog. Commander Middleton, I'm glad to
7 hear from you.

8 CDR. MIDDLETON: Yes, sir. I think, in front of
9 you, you have the project status report. That's what we're
10 updating once a week right now. It shows we have 24 cases
11 closed in policy. 18 cases are at the detective level and
12 14 cases are at the sergeant level. That means that the
13 detective has completed the case and that the sergeant is
14 checking it for accuracy. We have 24 cases closed in
15 policy. But what's changed from this status report from the
16 last one is that, prior to this, we had 5 cases closed out
17 of policy. But what we did is we put it through an -- and
18 considered it still under investigation. And what you'll
19 see down towards the bottom of the page, it says "Cases
20 initially found to have force out of policy." There's five
21 case numbers listed there. We are changing what we're doing
22 in the process now and some perhaps haven't had a chance to
23 review this, but we've put together PINS and identified the
24 problems, issues, needs, and solutions of how we're
25 going to deal with those out-of-policy cases and how we can

1 hold officers and commanders accountable.

2 What we're going to do is target the officer to
3 come in for an interview while still protecting them under
4 their collective-bargaining agreement and conducting the
5 interview and forwarding the case to Chief Geier. That way,
6 every officer will be -- officer, sergeant, lieutenant, and
7 commander will be brought in to discuss what happened in the
8 out-of-policy event, to bring them up to speed, correct
9 behavior, prevent future errant behavior, and change the
10 officers' conduct one at a time.

11 Additionally, for the officers and chain of
12 command who aren't found in the backlog process, we're
13 collecting all of the trend data through this backlog
14 process and we'll be forwarding that off to Cdr. Byrd for a
15 needs assessment to train future use-of-force training in
16 that process.

17 I know that you'll see the numbers on there. We
18 have 24 use-of-force cases, in policy, closed. You'll see
19 three cases, show-of-force, that are closed. And one
20 serious use-of-force case. The total on the second page
21 still shows 24. And the reason for that is the overlap. On
22 the use-of-force cases, they included three shows of force.
23 So they're separated out so you can see it, but it's still
24 one case number. The serious use-of-force case is included
25 in that as well, because there is some overlap to

1 show-of-force.

2 Two of our cases that we looked at so far could
3 have been considered criminal conduct by the officers. And
4 we did forward that through our criminal investigators to
5 have the discussion with the District Attorney's Office.
6 And we have received declination letters back on those two
7 cases so far.

8 And I know Dr. Ginger, the DOJ, and the APOA has
9 had a chance to look at this. They provided me feedback and
10 I made the changes to the project. So we're going to go
11 over that and then submit it once again for approval before
12 we start targeting officers in for interviews.

13 And I stand for any questions that you have.

14 THE COURT: Yes, sir. Commander, first of all,
15 it's a problem that -- you know, it's a big problem, has to
16 be addressed. I appreciate that you're doing it in a
17 methodical, professional way. But do you have all of the
18 resources you need to accomplish this working through the
19 backlog?

20 CDR. MIDDLETON: We have the resources we need.
21 And like you said, it's a complicated process. So we do
22 foresee us completing this. You know, it's not going to be
23 done tomorrow or by the end of 2018, but we do have the
24 resources to do this. We have separated out the work where
25 our investigators will be sending out the target letters and

1 they'll be doing the interviews of the officers. And to
2 task out the work, I just got assigned a Force Investigative
3 Section lieutenant. And he will be doing the interviews of
4 the sergeants and lieutenants. I'll be calling the
5 commanders in and having a discussion with them. And all of
6 this will be funneled into the Chief of Police where he'll
7 have the final decision.

8 THE COURT: And I have -- in reviewing for this
9 morning's status conference, I saw a reference to 17 hours
10 per, average 17 hours per investigation to clear something.
11 And then I saw another reference to 20-hour average. Can
12 you help me with that?

13 CDR. MIDDLETON: Yes, sir. There's -- we did
14 a -- basically, a metrics on how long it takes to review the
15 case and all of the evidence, the time spent on reviewing
16 video. We have a data form and a narrative form and then
17 the entire investigation. A lot of the times are skewed, so
18 we're throwing out highs and lows. That's where you're
19 seeing a few different numbers there. On a serious
20 use-of-force case, we've had one out on a detective level
21 for approximately a month, but we also have those
22 shows-of-force that take probably less than a day to review.
23 So we'll throw out those highs and lows, but the average
24 that we're looking at right now is on the bottom of the face
25 sheet where it shows 22.6 hours per case. And to date, we

1 have 40 -- of 49 cases reviewed, we have the time logs
2 turned in. And it's taken 1,107 hours to look at those 49
3 cases. And that doesn't mean those 49 are closed. They're
4 still -- some of those are still at the sergeant level.

5 THE COURT: All right. That's --

6 CDR. MIDDLETON: I don't know if that answers
7 your question or not. I know that was just a lot of hours
8 that I threw at you.

9 THE COURT: Thank you, Commander. That's
10 helpful.

11 Any -- Dr. Ginger, any questions for the
12 commander?

13 DR. GINGER: No, sir. We've found his work of
14 late to be certainly acceptable and to meet any standard
15 we've even just discussed with him, let alone given him
16 written notice on. So I think that's another high point in
17 the process. I will echo his concerns about the volume of
18 the work and the number of people assigned to deal with it,
19 but you know, these folks keep plugging along. We keep
20 seeing new cases come through as cleared. We have no
21 problems with quality of their work at this point. So at
22 this point, I think APD is doing about the best job it could
23 do in trying to work through this backlog.

24 It's a complicated issue, I guess, is the best
25 way to put it, because a backlog case has tentacles that

1 reach well beyond was the force acceptable or not and get
2 into issues like the Union contract and discipline and so
3 forth. But the unit is -- it is producing and it's
4 producing quality work.

5 THE COURT: And just to keep me clear, Commander,
6 this is just the backlog, and the -- we're reducing the
7 backlog steadily. We're keeping up with current cases
8 involving the three separate categories. Is that right?

9 CDR. MIDDLETON: We don't have the categories of
10 force yet in the three levels, as are noted in the joint
11 stipulation. We still have serious use-of-force cases
12 coming into our Cert. Unit, and then everything else is
13 reviewed within the chain of command. But we are keeping up
14 with that. We did make a change since I've been there.
15 Previously, in the Cert. Unit, we had all sergeants staffing
16 that unit. And since I've been there, they all went back
17 out in the field to do Uniformed Field Services Bureau work,
18 and I brought in officers to do that level work in the Cert.
19 Unit.

20 THE COURT: Thank you.

21 Anyone else with questions or comments about the
22 use-of-force backlog?

23 MR. MOWRER: Yes, sir. This is Fred Mowrer on
24 behalf of the APOA. The Department has submitted, within
25 the last week, a package of information concerning how

1 they're looking at the backlog of use-of-force cases. The
2 issue, as Dr. Ginger just referred to, that may impact this
3 issue with regard to the APOA's position and where this goes
4 will be how these cases are dealt with in a concept of
5 discipline, and the APOA has -- because of the contract
6 limitations on being able to impose discipline, has
7 responded to the City with regard to our concerns with their
8 proposals. And we are, hopefully, working with the City on
9 trying to resolve our concerns.

10 THE COURT: Thank you. Thanks, Mr. Mowrer.

11 Anything else?

12 MR. KILLEBREW: Your Honor, this is Paul
13 Killebrew for the United States. Just very briefly,
14 Cdr. Middleton didn't mention one thing that his unit is
15 doing, I think, worth the Court knowing about, which is
16 that, as they're reviewing these use-of-force cases, if
17 they're identifying issues that represent a problem for
18 policy or training or tactics, they're noting all of that
19 and making sure that they're, you know, carrying forward
20 those concerns into the appropriate units, whether it is the
21 Academy or the policy board.

22 You know, when we've spoken about the backlog
23 with the Court before, we've always pointed out that our
24 concern about the backlog is that it will make it difficult
25 for APD to eliminate the pattern or practice of

1 unconstitutional uses of force because these represent cases
2 in which they're not going to be able to impose discipline
3 if the use of force violated policy. So we are encouraged
4 that they're doing basically everything else that they can
5 to learn from these cases and use them to improve the
6 agency.

7 THE COURT: Thank you, Mr. Killebrew. And yeah,
8 it's plain that this problem -- well, a systemic problem
9 that the lingering effects -- and we've got to work through
10 them -- but with Cdr. Byrd raising up a whole new group of
11 cadets, proper training, at some point, we hope the backlog
12 goes away and we've got a police force in compliance.

13 I'm encouraged that we're making progress. I
14 appreciate the City's having designated an appropriate level
15 of resources to deal with the issue. And I look forward to
16 lots of reports going forward, Cdr. Middleton, that work
17 toward the elimination of the backlog.

18 The fifth item on the agenda, the use-of-force
19 review and development process. Mr. Schmehl?

20 MR. SCHMЕHL: Yes, Your Honor. Good morning.
21 I'll be providing an update on the status of the
22 Use-of-Force Policies as they've worked their way through
23 the anticipated process set out in Document 376, which was
24 filed with the court on June the 2nd.

25 SOP 2-52 is a general use-of-force policy that

1 was subject to the meetings with the parties and the monitor
2 in the beginning. It was then presented publicly at the
3 Office of Policy Analysis. There was a second presentation
4 to sworn personnel of that in an open meeting as well. And
5 where we stand, Your Honor, after, again -- the last actual
6 checkpoint in that process was an August 24 special meeting
7 called by the Police Oversight Board. At that point in the
8 policy development process, the Policy Procedures Review
9 Board had taken place, so there was something of a final
10 draft that had been submitted. And the parties and monitor
11 had also commented on it. So the City was in a position to
12 prepare a resolution draft for the monitor. And the
13 comments from the community at the Police Oversight Board
14 were taken into consideration. And a draft was presented to
15 Dr. Ginger for 2-52, the general Use-of-Force Policy on
16 September the 4th. We're anticipating comments back -- or a
17 resolution, rather, back from Dr. Ginger on the 19th of
18 September.

19 The City does have now 2-53, which is the Use-of
20 Force Definitions section. And a draft considering the
21 comments from the monitor and parties will be sent out to
22 Dr. Ginger for him to resolve.

23 2-54, which is intermediate weapons and then
24 2-55, which is the new deescalation policy, are to be
25 commented back to the City by the monitor and parties on

1 September the 14th, 2018.

2 Your Honor, you will recall that the purpose of
3 this effort to discuss not only with the parties and the
4 monitor, but also with the community, all of these policies
5 to make sure -- and actually, Your Honor, may I take a step
6 back. I left out 56 and 57, which 56 is the use of force
7 reporting policy and then 57 is the review and investigation
8 policy as it concerns use of force. Last week, there was a
9 meeting to discuss those two matters that was held between
10 the monitor and the parties. As I was saying, Your Honor,
11 the purpose at the beginning of this effort which started
12 the beginning of June was to make sure that the community
13 was brought along. This is the first time in this process
14 where there have been public presentations of any policies,
15 let alone the Use-of-Force Policies. So all of those
16 policies that I've mentioned have been presented publicly
17 save for 2-53, which the Police Oversight Board felt was a
18 bit too technical for a public discussion.

19 Now, last week at the meeting with the monitor
20 and parties, 56 and 57 were discussed, as I mentioned.
21 During that meeting, the fact that 52, the general
22 Use-of-Force Policy, had not been resolved was discussed and
23 noted as a concern.

24 So those policies, Your Honor, are moving through
25 the process anticipated by Document 376, which, then, brings

1 us to, of course, the training. In that filing and in the
2 order that followed, in 377, the deadline to review the
3 Use-of-Force Policy was September the 21st. However, the
4 deadline to obtain -- for the City to obtain approval of the
5 training was October the 1st. The City anticipates filing a
6 motion to extend that deadline. It's unworkable. At the
7 time that that filing was made, the Academy was working with
8 different leadership. And of course, that filing was
9 informed by that leadership, but now, we have Cdr. Byrd, the
10 Department has Cdr. Byrd. She has been working diligently
11 to start -- in the background, of course, because training
12 cannot be delivered until a final approved policy is on her
13 desk -- to pull together training for every one of these
14 policies. And then also there's, in the background of those
15 trainings, the RBT and other types of use-of-force concerns
16 for Department personnel.

17 So that is my update, Your Honor. Of course, the
18 most notable concern is the fact that the October 1 deadline
19 for the approval of the training by the independent monitor
20 will be missed; however, there have been discussions with
21 the monitor and parties about those concerns. We feel like
22 we do have a meeting of the minds, that this is not to be
23 rushed, as it was in the first iteration of the training,
24 which has been highly criticized by Dr. Ginger and his team.

25 THE COURT: Thank you, Mr. Schmehl.

1 Mr. Killebrew?

2 MR. KILLEBREW: Thank you, Your Honor. I don't
3 have much to add to what Mr. Schmehl said. I just wanted to
4 emphasize that I believe, as Mr. Schmehl does, that we're
5 going to have to extend those deadlines that we set for
6 getting policy and training done, but I think that they're
7 for good reason. And Your Honor may remember that the
8 initial Use-of-Force Policy we did in this case took quite
9 some time, like 12 to 18 months, as I remember, to get
10 completed. And the reason it took so long was that the City
11 essentially wanted to renegotiate the terms of the CASA and
12 the draft of the policy, and it just took a long time to
13 work through that. And in this instance, that's not what
14 we're looking at. We're not seeing the City trying to pull
15 back on its commitment that way. What we're seeing is a
16 much more open, transparent, and democratic process for
17 developing the policy where a lot more stakeholder input is
18 being invited and solicited and considered. I can just tell
19 the Court that the Police Oversight Board has had two public
20 meetings just on Policy 2-52, the core Use-of-Force Policy.
21 And I attended the first one and watched the video of the
22 other one. And it was -- in my mind, it was a sign of a
23 great success in this case because you had, across the
24 meetings, dozens of members of the Albuquerque community
25 speaking to their civilian oversight board with substantive,

1 meaningful comments about the Use-of-Force Policy and then
2 you had board members who had spent a lot of time studying
3 the policy giving their perspective on what APD should or
4 should not do.

5 You know, when we established these institutions
6 at the beginning of this case, I think we all hoped that
7 they would work. And to me, this was a sign that they are
8 working, that the public does have a real place to speak.
9 And I think people are incentivized to show up to these
10 meetings and speak because they know that APD and the City
11 will be listening to them and considering what they say.

12 So if things are going to take a little longer to
13 make that happen, I think it's well worth the investment of
14 time. And it's setting the tone and the course for policy
15 development at APD going forward.

16 THE COURT: Thank you, Mr. Killebrew.

17 And I, just so you-all are -- you know, for those
18 of you that are keeping score, I complimented Dr. Ginger a
19 minute ago when he described something as being "absolutely
20 spectacular." And Mr. Killebrew has just said that one of
21 the police oversight meetings had been a "great success." I
22 like hearing those things. And I understand there's still a
23 lot of activity down in the weeds, but I certainly liked the
24 positive comment.

25 Mr. Mowrer, you're next relating to the

1 use-of-force review process.

2 MR. MOWRER: Yes, sir. And I'd just add very
3 briefly, on behalf of the APOA, we are working with the
4 parties there trying to finalize these policies, as
5 described by Mr. Schmehl, and are waiting -- I think the one
6 policy we're waiting on is 2-52 from Dr. Ginger and his
7 comments. And agree that, with the time that it's taken,
8 probably that the October 1st, 2018, deadline may not be
9 doable, especially when you have a new director at the
10 Academy. But we'll wait and see how this all turns out.

11 THE COURT: There's been reference to that
12 October 1st deadline and the likelihood that it's not
13 going to be met. Can we -- with we reasonably come up with
14 a different deadline, a later deadline, that makes sense for
15 everyone and we can work toward it?

16 MR. SCHMEHL: Yes, Your Honor. That's exactly
17 what's happening, Your Honor. As we've -- as we, the
18 parties and monitor, have come to the recognition this first
19 deadline was not reasonable, we started discussions. And
20 that was last Thursday, really, the first discussion of that
21 sort took place. So while I cannot provide you one during
22 this call, we will be working to get you one as soon as
23 possible.

24 THE COURT: Dr. Ginger?

25 DR. GINGER: Yes, sir, Your Honor. I hate to be

1 the one to rain on the parade, but I just simply have to
2 report the facts. I received the latest use-of-force
3 document, 2-52, from the parties last week. I found it
4 lacking in multiple key aspects. It was missing key
5 components. Issues that needed to be dealt with in a
6 Use-of-Force Policy were not dealt with. I had questions
7 about enforceability. So I'm working on writing the
8 resolution document. I got the final comments pulled
9 together and started on that Thursday, I guess; worked all
10 day Thursday, all day Friday, and through the weekend. I
11 have the resolution document in draft form. I'm going
12 through it now, correcting misspellings and editing and that
13 sort of thing. I found it necessary to basically rewrite
14 the policy. There were, at last count, 50-plus changes that
15 I saw as needing to be made. So it's been a fairly complex
16 process. Those have been made. They're in draft form. As
17 soon as I finish proofing that draft, it will go out to the
18 parties immediately. So I would expect something probably
19 by no later than Wednesday on that resolution draft.

20 THE COURT: And given your knowledge of the
21 process, what is a reasonable, workable new deadline if
22 October 1st doesn't work?

23 DR. GINGER: Well, it depends on what the process
24 is for dealing with that resolution draft. And I really --
25 I really have no idea at this point how it's going to be

1 received by the parties. It was -- it was executed to
2 correct those 50 changes that we noted that needed to be
3 made. It was executed to be congruent with the policy -- or
4 with the CASA, I'm sorry. And it depends -- quite frankly,
5 it depends on the reaction of the Department of Justice, the
6 City, and the Union as to how long that's going to take. I
7 would not be surprised if this is -- you know, depending on
8 what the rule is for what happens to a resolution draft, if
9 we're going to go through the same process as we went
10 through before, it could be weeks. If it is, indeed, a
11 resolution draft, you know, according to the CASA, if the
12 parties are unhappy with it, they need to advise the Court
13 and get a ruling. When it goes out of here, I'll be
14 comfortable with it as reflecting best practices in the
15 field and reflecting the type of policy that APD needs to be
16 working with on use of force right now. But obviously, that
17 has to go through the parties, and my guess is it might be
18 revisited by the Court.

19 THE COURT: All right. I don't like slippage. I
20 don't like deadlines being missed, as you all know by now,
21 well know, I expect. I -- just so as to keep the pressure
22 on, I'm going to suggest a generous extension to
23 October 31st. And if it's not done by then, I want to
24 know why and I'll expect motions practice. Clear enough?

25 MR. MOWRER: I'm sorry, Your Honor. This is Fred

1 Mowrer. What was that date?

2 THE COURT: October 31st. Any other comment
3 about the Use-of-Force Suite of Policies?

4 All right. Number 6, status report of mediation
5 of complaints under the pilot program.

6 Mr. Harness and Mr. Ryals?

7 MR. HARNESS: Good morning, Your Honor. Edward
8 Harness from the Civilian Police Oversight Agency.

9 Upon the Court's signing of the order in May, I
10 met with City of Albuquerque's Alternative Dispute
11 Resolution Section, which facilitates the community
12 mediation program. I met with Tyson Hummell, director, and
13 Shannon Triplett, the administrator, and we set up
14 protocols and procedures for contacting the parties,
15 facilitating the mediation sessions, and then distributing
16 the exit surveys for the process.

17 We've had four cases referred out to mediation.
18 All of those cases were closed due to a lack of cooperation
19 on behalf of the complainant.

20 THE COURT: I'm sorry, Mr. Harness. I didn't
21 understand. They're closed for what reason?

22 MR. HARNESS: The complaining civilian declined
23 to participate in the process and requested an informal
24 counseling with -- through the command for the officer's
25 behavior. So we referred it to the command for an informal

1 dispute resolution.

2 We had two cases where the officers were deemed
3 to not be eligible for mediation based upon the criteria set
4 out in the Memorandum of Understanding. And because of this
5 lack of cooperation on behalf of the complainants, in this
6 next series of referrals, which I have seven, I have reached
7 out to them by sending them a mediation brochure and letting
8 them know to expect contact from City ADR to see if that
9 will help facilitate better cooperation on behalf of the
10 complainants.

11 Other than that, I would stand for questions if
12 the Court or any other parties have any questions.

13 THE COURT: Thank you, Mr. Harness.

14 Mr. Ryals?

15 MR. RYALS: Yes, Your Honor. We don't have any
16 further comments. Thank you.

17 THE COURT: Mr. Harness, if I can circle back to
18 you, so am I hearing that there's a high percentage of those
19 complaints that are made that people are not interested or
20 sufficiently motivated to pursue mediation when it's
21 offered? Is that what I'm hearing?

22 MR. HANNESS: Yes, Your Honor, that's been the
23 reaction so far. And where sort of the rub is, is that our
24 oversight ordinance for the City of Albuquerque requires
25 mediation first, so for those types of calls -- complaints

1 that come in that are deemed to be suitable for mediation,
2 the ordinance would require those -- along with the MOU, for
3 those to go to mediation first and explore that remedy. And
4 so far, we're having a lack of cooperation on behalf of the
5 citizens.

6 THE COURT: Dr. Ginger, do you have any
7 experience with this mediation process and is this a result
8 to be expected? These are -- these are not major
9 complaints. These are not use-of-force complaints, right?
10 Those wouldn't qualify for the process?

11 DR. GINGER: That's correct, sir.

12 THE COURT: So did you have --

13 DR. GINGER: I'm sorry. Go ahead.

14 THE COURT: I was just going to ask if this is
15 something you would expect, given your experience, in terms
16 of lower-level complaints, people just -- when they're
17 offered mediation or required to attend mediation, do they
18 simply give up at that point or...

19 DR. GINGER: I don't have direct experience, Your
20 Honor, but I am familiar with the literature. And that is a
21 common theme in the literature, that particularly when these
22 processes are new and particularly, as in this case, the
23 original complaint was a substantial period of time has
24 elapsed since the original complaint was filed, that is not
25 unusual. It usually takes these things months, if not

1 years, to get to become part of a routine process. And
2 that's usually accomplished only when you have enough folks
3 who are willing to go through the process and go through the
4 process and are reasonably satisfied with it and feel like
5 their issue has been resolved that, you know, the numbers of
6 people willing to go through the process go up and
7 efficiency improves, but it does take -- it does take time,
8 a couple of years, in most cases, before it's a meaningful,
9 workable, relied-upon process.

10 THE COURT: Mr. Harness, is there any sort of
11 public reporting of the availability of mediation, and
12 perhaps leaving parties' names out of it, allowing for
13 anonymity, but letting people know that the process exists
14 and the process is responsive and good things happen? I
15 mean, is there any sort of educational component for the
16 community to understand its availability and the likelihood
17 of a positive result?

18 MR. HARNESS: Yes, Your Honor, we are continually
19 promoting the program in public outreach. We also have
20 developed a brochure explaining the process for those that
21 are involved. We have a brochure that goes to the
22 complainant, and we also have a mediation guide that goes to
23 the officers. We have had 100 percent cooperation from the
24 officers' side. We have not had the cooperation from the
25 civilian side. The only point I would make is that we

1 are -- we are -- we are making this outreach to these
2 complainants within about seven business days from the time
3 that we get the complaint, so they are rather fresh. And we
4 are making this available. So we'll continue to do the
5 outreach and we'll try to tailor the program to garner as
6 much public participation as we can.

7 THE COURT: Thank you.

8 And yeah, please do that and keep me posted.

9 Number 7 is the update on the promotional policy.

10 Ms. Hults?

11 MS. HULTS: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MS. HULTS: The City wants to thank you and the
14 court for making such a very quick ruling on our various
15 motions on this policy.

16 Right now, Mr. Mowrer and I have been discussing
17 the rulings, particularly page 5, which talks about Section
18 11(a) and amends that provision to make that section
19 discretionary. The City has sent a proposal to the APOA on
20 that provision. There may be some miscommunication, I
21 think, and Mr. Mowrer and I probably need to sit down and
22 talk about that, but basically the City is proposing that as
23 the Court suggests that section is -- would not be
24 discretionary for a period of time. And if you look at some
25 of the disciplinary issues that the APOA may be concerned

1 about, including some issues put -- or disciplinary issues
2 that may have been something that was a result of Chief
3 Eden. Chief Eden actually retired in November of 2018
4 [sic]. Section 11(a) requires that --

5 THE COURT: Ms. Hults, you said "November of
6 '18." It's obviously '17.

7 MS. HULTS: Sorry. '17. Sorry. And that
8 basically Section 11(a) requires that you look back 12
9 months from the date of the written exam. And so actually,
10 where the 2018 date was coming is most of the disciplinary
11 issues of, you know, Chief Eden that would affect that
12 section would come to an end in 2018, in November. And so
13 we were proposing that Chief Geier have discretion and look
14 at those 40-hour suspensions whenever there is a promotional
15 process up until that point or even beyond that point, if
16 the Union felt that that was necessary, and come up with a
17 sunset provision date for that.

18 We would like to get this agreed upon and moved
19 as quickly as possible because, after we have that agreed
20 upon, this is one of those policies that requires
21 rule-making through the City of Albuquerque because it's a
22 human resources policy. And the City is ready to move
23 forward with that.

24 I believe the City has recently learned, anyways,
25 that the Union does plan to file a motion to reconsider.

1 And I'll let Mr. Mowrer kind of talk a little bit about
2 that.

3 THE COURT: Mr. Mowrer?

4 MR. MOWRER: Sir, with regard to Ms. Hults'
5 explanation of the sunset provision that you provided, we do
6 need to meet about that. I did send her communication
7 concerning that. We've not been able to sit and talk. This
8 week would be best if we do because I'm still a little --
9 even with this most recent explanation, I'm still a little
10 confused as to how she's proposing it applies.

11 And with regard to another issue we've been
12 attempting to negotiate, we've been unable to reach a
13 resolution of that, unfortunately, and we'll file a motion
14 on that this week.

15 THE COURT: We'll, I'll see that when I do, I
16 guess.

17 Mr. Sanders?

18 MR. SANDERS: Yes, Your Honor. DOJ, we've worked
19 closely with the City and APOA on this issue, Your Honor,
20 and we've just been waiting on implementation so we can
21 effectively monitor it. And that's all the United States
22 has.

23 THE COURT: Well, of course. All right.

24 Well, keep me posted, Mr. Mowrer --

25 MR. MOWRER: Yes, sir.

1 THE COURT: -- and Ms. Hults.

2 MS. HULTS: Thank you.

3 THE COURT: Yes, ma'am.

4 Number 8, third round of amici and stakeholder
5 meetings set to begin, I guess, today, through the 12th.

6 Chief Garcia?

7 D.C. GARCIA: Yes, Your Honor. They will be
8 starting this afternoon at 2 P.M. and running to 5 P.M.
9 today, our time. We have another meeting tomorrow, I
10 believe, and another meeting on Wednesday. So all the amici
11 meetings will be done this week. We plan on discussing the
12 progress of the Compliance Plan, our Compliance Plan
13 Number 2, coming up, and also the progress report that was
14 filed with the Court.

15 THE COURT: Thank you.

16 Lt. Lowe, anything to add?

17 D.C. GARCIA: Your Honor, she's still on
18 vacation.

19 THE COURT: How long she going to be on vacation?
20 I don't mind, you know, a little vacation, but...

21 "She's still on vacation." Yeah, my court
22 reporter caught that before I did. All right. My bad.

23 Community meeting on November the 10th.

24 Mr. Lewis and Ms. Martinez?

25 MR. LEWIS: Your Honor, if I may? James Lewis.

1 I just want to give a little outline of some of the things
2 we're working on for this community meeting, but first of
3 all, I want to just thank Ms. Martinez, who has been working
4 with us side by side. I also want to thank the Compliance
5 Bureau. I want to echo the sentiments that Dr. Ginger gave
6 a few minutes ago, that this group has been working from
7 sunup to sundown. And the lead person that's going to be
8 working with us on that is Cdr. Campbell from the Compliance
9 Bureau, so I want to thank her.

10 We've actually had a date of the 17th, but the
11 Mayor has looked at and agreed to do it on the 10th. I want
12 to make sure that the monitors, when they're here, get a
13 chance to participate. We have set this up where the Mayor,
14 the Chief, and also the U.S. Attorney are going to be some
15 of the keynotes that we have. We have two hours on the 10th
16 from two to four.

17 We also want to make sure that we start
18 announcing and promoting this. So Chris Sullivan with the
19 CPCs -- we have a CPC tonight and we have two others this
20 week, so he will be announcing that. So we want all the
21 amicis [sic], all the stakeholders involved.

22 We're expanding that because there's been a
23 tremendous discussion on what do we mean by "community"? So
24 we want to broaden this to get the community as a whole
25 involved. So we're engaging the faith community. I spoke

1 with Terry Cole this morning from the Greater Albuquerque
2 Chamber of Commerce. She wanted to know how many people do
3 we need to get there from the business community. So
4 they're excited about it and they're also excited about
5 coming to court when we actually have the next hearing.

6 So along with that, I want to thank the Mayor.
7 The Mayor has a list, the U.S. Attorney's office have a list
8 of potential invitees. I also spoke with the minister of
9 fellowship, Pastor Alarid, also with another minister's
10 group. He has about 72 different ministers that he's
11 working with. We're going to engage and invite each and
12 every one of them to participate.

13 So the -- just one other last thing: It's going
14 to be held at the convention center and we're still working
15 on locations. Chris is also -- with the CPC -- is helping
16 us with the Office of Neighborhood Coordination, the
17 neighborhood coalition. And what we're doing, we want to
18 make sure that the amicis [sic] and the stakeholders, they
19 have representatives come, but some of them are representing
20 somewhere in the neighborhood of anywhere from 18 to 23
21 different organizations and we want to make sure that they
22 get sent an invitation to all of their membership.

23 So Your Honor, that's pretty much my overview at
24 this point of some of the things that we're working on. I
25 stand for any questions at this point.

1 THE COURT: Thank you, Mr. Lewis.

2 And Ms. Martinez, did you have anything to add?

3 MS. MARTINEZ: Yes, Your Honor. Briefly. I
4 would like to invite Your Honor to consider joining us for
5 this meeting, whether as a formal part of the program or as
6 a member of the audience. We have learned that, throughout
7 the country, judges do participate in community meetings,
8 both formally and informally. Sometimes unannounced. And I
9 understand that Your Honor will be here in Albuquerque that
10 week for a trial that you anticipate will go for two weeks.
11 So if it works for the Court's schedule, the parties and
12 monitor would be honored to have you as part of the program.

13 The Mayor has asked that we use this as an
14 opportunity to educate the community about this process in
15 an overview way. And so we will be preparing some general
16 fliers that give sort of a nutshell view of what this
17 process is about, in addition to having the Compliance
18 Bureau provide an update on where APD is in terms of
19 complying with the CASA.

20 I think that what we can expect is that there
21 will be some presentations on the -- you know, just on the
22 explaining the IMR-8 because that will have been filed on
23 November 2nd. But I do know that the Mayor has asked that
24 we give an explanation to the community, generally, about
25 what these constitutional policing efforts are about. And

1 so we will be working with my colleagues at the Department
2 of Justice to pull that together and provide that kind of a
3 presentation.

4 THE COURT: Thank you, Ms. Martinez.

5 MS. MARTINEZ: Does the Court have any questions
6 for us?

7 THE COURT: Well, just thank you for that. Thank
8 you for the invitation. I do have a trial that's scheduled
9 to begin the 6th and go through the 16th, with the Monday,
10 the 12th, being a holiday, I think. And I'm not at all
11 clear at this point that I will still be in Albuquerque on
12 Saturday the 10th. Given the holiday, I may be back home
13 for a couple of days.

14 But I am planning to be in Albuquerque on the
15 5th, Monday, the 5th, and -- for purposes of maybe doing
16 a ride-along or whatever else you-all might have in mind for
17 me. So I am thinking about that and trying to otherwise
18 look at the schedule to see what it will allow.

19 But I'm pleased that you're having the meeting
20 and pleased, too, for the Mayor's leadership in wanting to
21 be transparent about the processing and educating the public
22 about it.

23 Anything else on the community meeting?

24 MS. MARTINEZ: No, Your Honor.

25 THE COURT: All right. So Number 9 on the

1 agenda, Dr. Ginger, you're still on track to have the
2 IMR-8 filed on November the 2nd?

3 DR. GINGER: Yes, Your Honor, that's correct.

4 THE COURT: Draft to the parties by October the
5 2nd and comments thereto on the 17th.

6 Because of scheduling difficulties and for the
7 need to have -- allow the amici to have time to respond to
8 IMR-8, I think we are looking at December 7th, is that
9 right, for the public hearing?

10 MS. MARTINEZ: Yes, Your Honor. I understand
11 from Your Honor's law clerk that you have scheduled us for
12 December 7th, at 11 A.M.?

13 THE COURT: Yes, ma'am. I have a trial in Las
14 Cruces the 4th, 5th and 6th. Assuming that trial
15 concludes, I'll come up there on Friday morning and we'll
16 begin at 11:00 and have the rest of the day for the hearing.

17 Yeah, that's that.

18 I guess the monitoring team is going to be in
19 Albuquerque the 5th through the 9th of November? And any
20 other discussion about upcoming dates?

21 MR. AGUILAR: May it please the Court, Your
22 Honor, this is Mr. Aguilar. The site visit, again, is
23 through the -- the 5th through the 9th, 2018. Depending on
24 your schedule, we would love for you to be able to step in
25 or to sit down with the team as they go through their

1 duties, to sit down with Cdr. Middleton. I know we had had
2 some discussions about that, but I understand your time is
3 valuable, but wanted to extend the invitation to make sure
4 that you're aware, so that you can see firsthand some of the
5 tremendous work that the Department is doing, as well as get
6 an understanding of the level of complexity of some of the
7 projects, the various divisions within the Compliance Bureau
8 are working on. But I also understand you'll be in trial.
9 And so, anyways, I'll turn the phone over to Ms. Martinez.

10 MS. MARTINEZ: Yes, Your Honor. One of the
11 recommendations that the parties and the monitor had was for
12 November 5th, which we understand you are -- is currently
13 open on the Court's schedule, is perhaps brief status
14 conference with the parties and the monitor and time with
15 Cdr. Middleton's team on the use-of-force backlog and
16 perhaps a ride-along with the Crisis Intervention Unit and
17 the Associate Monitor Laura Kunard, who is the expert on the
18 mental health matters.

19 THE COURT: And I am open to any or all of that
20 on the 5th. I appreciate the invitation relating to the
21 rest of the week's activities. That trial is not going to
22 allow for any of that, assuming it goes. And relative to
23 the comment about other judges and other cities have more
24 involvement, you know, that's...if you-all decide somebody
25 else ought to be doing this, somebody that lives in

1 Albuquerque, who has more access to you-all, I'll
2 understand.

3 And I can tell you that this senior judge stuff
4 doesn't seem so senior when you look at my schedule over the
5 next couple of months. But anything else this morning?

6 MR. AGUILAR: Nothing from the City, Your Honor.

7 MR. MOWRER: Not from the APOA, Your Honor.

8 MS. MARTINEZ: Not for the United States, Your
9 Honor.

10 DR. GINGER: Not from the monitor, Your Honor.

11 THE COURT: Well, thanks, everyone, for your time
12 this morning, for all of your great effort. And I'll be
13 seeing you-all soon and look forward to it.

14 You-all have a great day, in the meantime, and
15 keep me up to date. Thank you.

16 (The proceedings concluded at 11:22 A.M.)

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1 UNITED STATES OF AMERICA

2 DISTRICT OF NEW MEXICO

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4 CERTIFICATE OF OFFICIAL REPORTER

5 I, Vanessa I. Alyce, RPR, NM CCR, and Federal Official
6 Court Reporter in and for the United States District Court
7 for the District of New Mexico, do hereby certify that
8 pursuant to Section 753, Title 28, United States Code, that
9 I did report in stenographic shorthand to the best of my
10 skill and ability the foregoing pages 1-53 of the
11 proceedings set forth herein, that the foregoing is a true
12 and correct transcript of the stenographically recorded
13 proceedings held in the above-entitled matter and that the
14 transcript page format is in conformance with the
15 regulations of the Judicial Conference of the United States.

16

17 Dated this 14th day of September 2018.

18

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